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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2013-2014

OPINION OF THE JUSTICES

No. 388

Opinion Issued February 27, 2014

Members of the Senate
Alabama State House
Montgomery, Alabama 36130

Dear Senators:

I have received the Senate's request for an opinion of the Justices of the Supreme Court as to whether the constitutional amendments proposed by Senate Bills 253, 258, 259, 261, and 276, if ratified, would violate § 284 of the Constitution of Alabama of 1901. Initially, I note that I

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agree with the separate advisory opinion issued today by Chief Justice Moore. Moreover, based on my special concurrence in Bell v. Strange, [Ms. 1120603, September 27, 2013] ___ So. 3d ___ (Ala. 2013), I answer the question in the affirmative: the constitutional amendments proposed by the above-mentioned senate bills, if ratified, would violate § 284, Ala. Const. 1901.

Senate Resolution No. 44 states, in pertinent part:

"[W]e respectfully request the Honorable Chief Justice and Associate Justices of the Alabama Supreme Court, or a majority of them, to give this body their written opinions on a constitutional question which has arisen concerning the following pending Senate Bills: SB253 relating to impeachment of certain public officials; SB258 relating to the Legislative Department; SB259 relating to the Executive Department; SB261 relating to the Separation of Powers of Government; and SB276 relating to Homestead Exemptions.

"Section 284 of the Constitution of Alabama of 1901 (the constitution) prescribes the manner in which amendments to the constitution may be proposed by the Legislature. Three-fifths of all members elected to both the House of Representatives and the Senate must approve proposed amendments, after which the proposals must be voted upon by the electorate, and if approved by a majority of the voters, become a valid part of the constitution.

"In a September 27, 2013, decision of the Alabama Supreme Court, Bell v. Strange, [[Ms. 1120603, September 27, 2013] ___ So. 3d ___ (Ala. 2013)], the court discussed the role of Section 284

in amending the constitution.^[1]

"Because the purpose of the Senate Bills cited is to propose various amendments to the constitution to be submitted to the voters of the state, and in deference to this legislative body so that we may properly and constitutionally perform the duties of our office, written opinions are requested concerning the following important constitutional question:

"If pending Senate Bills 253, 258, 259, 261, and 276 are passed in compliance with the requirements of Section 284 of the Constitution of Alabama, would they be constitutionally valid proposed constitutional amendments?"

The underlying constitutional question presented by Senate Resolution No. 44 concerns the manner in which the legislature may amend the Alabama Constitution. In my special concurrence to Bell, I set forth the following, which answers the underlying constitutional question presented by Senate Resolution No. 44:

"I write ... to express my concern ... with legislative proposals, allegedly proposed to the people pursuant to Art. XVIII, § 284, Ala. Const. 1901, to amend many sections of the Alabama Constitution by the validation of a single amendment
....

"As Chief Justice Torbert noted in his special concurrence in State v. Manley, 441 So. 2d 864 (Ala.

¹In Bell, this Court affirmed the trial court's judgment without an opinion. Justice Shaw and I authored special concurrences, and Chief Justice Moore authored a dissent.

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1983):

"'There is a difference between the power of the Legislature to enact statutes and the power to change the Constitution. Jones v. McDade, 200 Ala. 230, 75 So. 988 (1917). In Bourbon v. Governor of Maryland, 258 Md. 252, 257-58, 265 A.2d 477, 480 (1970), the Maryland Court of Appeals, considering the legislature's role in initiating constitutional change, wrote:

""[T]he legislature does not exercise its ordinary legislative power or any sovereignty of the people that has been entrusted to it but acts under a limited power which the people have conferred upon it and which with equal propriety and appropriateness might have been conferred upon either house, the governor, a special commission or other body or tribunal. In proposing amendment of the Constitution the legislature does not have the plenary powers it has in enacting laws but only the powers specifically delegated to it."

''(Citations omitted). The Legislature has plenary power with respect to statutory matters, but only a limited power as to constitutional matters. Johnson v. Craft, [205 Ala. 386, 87 So. 375 (1921)]; Opinion of the Justices [No. 92], 252 Ala. 89, 39 So. 2d 665 (1949). In regard to its powers to change the Constitution, the Legislature, as the representative of the people, has only those powers specifically granted by the people through the Constitution. Opinion of the Justices [No.

116], [254 Ala. 183, 47 So. 2d 713
(1950)].'

"Manley, 441 So. 2d at 877-78 (Torbert, C.J.,
concurring).

"The people, through the Alabama Constitution, have entrusted to the legislature two powers in regard to amending or changing the constitution: 1) to propose an amendment to the people for validation by their vote, pursuant to either § 284 or Art. XVIII, § 284.01, Ala. Const. 1901, and 2) to call a constitutional convention, pursuant to [Art. XVIII,] § 286, [Ala. Const. 1901,] which will commence only upon a majority vote of the people. The effect of an article-by-article amendment approach is the creation of a third legislative power in regard to changing the constitution. This is an enlargement of legislative power in contravention of Art. I, § 2, Ala. Const. 1901, which provides, in pertinent part: 'That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit'

"It is the 'tendency of vested power to broaden and exalt itself.' Ellingham v. Dye, 178 Ind. 336, 345, 99 N.E. 1, 4 (1912). For this reason, it is '[t]he people[] in whom resides the vital power in reference to organic law' and not the legislature. Collier v. Frierson, 24 Ala. 100, 105 (1854). Through the constitution, the people have '"prescribe[d] the exclusive modes by which it may be altered or amended, or its effect and operation changed."' Manley, 441 So. 2d at 873 (quoting Johnson v. Craft, 205 Ala. 386, 393, 87 So. 375, 380 (1921)). As stated by Chief Justice Torbert, the legislature is limited to the powers entrusted to it by the people. Because of the tendency of governments to expand their own power and suppress the rights of the people, this Court must vigilantly protect the 'inalienable and indefeasible right' of the people to create and maintain the form and

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function of the State 'in such manner as they may
deem expedient.' Art. I, § 2, Ala. Const. 1901."

Bell, ___ So. 3d at ___ (Parker, J., concurring specially).

Therefore, because each of the senate bills as to which
you have asked for an advisory opinion would amend entire
articles of the Constitution of Alabama of 1901, the
constitutional amendments proposed by the senate bills would
violate § 284.

Respectfully Submitted,

/s/ Tom Parker
Tom Parker
Associate Justice